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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2002 63046

RONALD J. BERRY
1820 12th Street, #6
Santa Monica, CA 90404

A C C U S A T I O N

Physical Therapist License No. PT 17150

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about January 16, 1991, the Physical Therapy Board of California issued Physical Therapist License Number PT 17150 to Ronald J. Berry (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2660 of the Code states, in pertinent part:

3 “The board may, after the conduct of appropriate proceedings under the
4 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
5 probationary conditions upon, or issue subject to terms and conditions any license, certificate, or
6 approval issued under this chapter for any of the following causes:

7 * * *

8 “(h) Gross negligence in his or her practice as a physical therapist.

9 “(i) Conviction of a violation of any of the provisions of this chapter or of the
10 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or
11 assisting in or abetting the violating of, or conspiring to violate any provision or term of
12 this chapter or of the State Medical Practice Act.

13 “(j) The aiding or abetting of any person to violate this chapter or any regulations
14 duly adopted under this chapter.

15 “(k) The aiding or abetting of any person to engage in the unlawful practice of
16 physical therapy.

17 “(l) The commission of any fraudulent, dishonest, or corrupt act which is
18 substantially related to the qualifications, functions, or duties of a physical therapist.”

19 5. Section 2630 of the Code states, in pertinent part:

20 “A physical therapist . . . may utilize the services of one aide engaged in patient-
21 related tasks to assist the physical therapist in his or her practice of physical therapy. . . . The
22 aide shall at all times be under the orders, directions, and immediate supervision of the physical
23 therapist. . . . The physical therapist shall provide continuous and immediate supervision of the
24 aide. The physical therapist shall be in the same facility as, and in proximity to, the location
25 where the aide is performing patient-related tasks, and shall be readily available at all times to
26 provide advice or instruction to the aide. When patient-related tasks are provided to a patient by
27 an aide, the supervising physical therapist shall, at some point during the treatment day, provide
28 direct service to the patient as treatment for the patient’s condition, or to further evaluate and

1 monitor the patient's progress, and shall correspondingly document the patient's record."

2 6. Section 2620.7 of the Code states:

3 "A physical therapist shall document his or her evaluation, goals, treatment plan,
4 and summary of treatment in the patient record. Patient records shall be maintained for a period
5 of no less than seven years following the discharge of the patient, except that the records of
6 unemancipated minors shall be maintained at least one year after the minor has reached the age
7 of 18 years, and not in any case less than seven years."

8 7. California Code of Regulations, title 16, section 1399, states in pertinent
9 part:

10 "A physical therapy aide is an unlicensed person who assists a physical therapist
11 and may be utilized by a physical therapist in his or her practice by performing nonpatient
12 related tasks, or by performing patient related tasks.

13 "(a) As used in these regulations:

14 "(1) A 'patient related task' means a physical therapy service rendered directly to
15 the patient by an aide, excluding nonpatient related tasks as defined below.

16 "(2) A 'nonpatient related task' means a task related to observation of the patient,
17 transport of patients, physical support only during gait or transfer training, housekeeping
18 duties, clerical duties and similar functions.

19 "(b) 'Under the orders, direction and immediate supervision' means:

20 "(1) Prior to the initiation of care, the physical therapist shall evaluate every
21 patient prior to the performance of any patient related tasks by the aide. The evaluation
22 shall be documented in the patient's record.

23 "(2) The physical therapist shall formulate and record in the patient's record a
24 treatment program based upon the evaluation and any other information available to the
25 physical therapist, and shall determine those patient related tasks which may be assigned
26 to an aide. The patient's record shall reflect those patient related tasks that were rendered
27 by the aide, including the signature of the aide who performed those tasks.

28 "(3) The physical therapist shall assign only those patient related tasks that can be

1 safely and effectively performed by the aide. The supervising physical therapist shall be
2 responsible at all times for the conduct of the aide while he or she is on duty.

3 “(4) The physical therapist shall provide continuous and immediate supervision of
4 the aide. The physical therapist shall be in the same facility as and in immediate
5 proximity to the location where the aide is performing patient related tasks, and shall be
6 readily available at all times to provide advice or instruction to the aide. When patient
7 related tasks are provided a patient by an aide the supervising physical therapist shall at
8 some point during the treatment day provide direct service to the patient as treatment for
9 the patient's condition or to further evaluate and monitor the patient's progress, and so
10 document in the patient's record.

11 * * *

12 “(6) The supervising physical therapist shall countersign with their first initial and
13 last name, and date all entries in the patient's record, on the same day as patient related
14 tasks were provided by the aide.”

15 8. Section 725 of the Code states:

16 “Repeated acts of clearly excessive prescribing or administering of drugs or
17 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts
18 of clearly excessive use of diagnostic or treatment facilities as determined by the standard
19 of the community of licensees is unprofessional conduct for a physician and surgeon,
20 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.
21 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
22 California Intractable Pain Treatment Act shall be subject to disciplinary action for
23 lawfully prescribing or administering controlled substances in the course of treatment of a
24 person for intractable pain.”

25 9. Section 810 of the Code states in pertinent part:

26 “(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
27 including suspension or revocation of a license or certificate, for a health care
28 professional to do any of the following in connection with his or her professional

activities:

* * *

“(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

“(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.”

10. Section 2661.5 of the Code states:

“(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

“(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

“(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

“(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

“(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all

1 of the costs ordered under this section.

2 (2) Notwithstanding paragraph (1), the board may, in its
3 discretion, conditionally renew or reinstate for a maximum of one year the
4 license or approval of any person who demonstrates financial hardship and
5 who enters into a formal agreement with the board to reimburse the board
6 within that one year period for those unpaid costs.

7 “(f) All costs recovered under this section shall be deposited in the
8 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
9 costs are actually recovered or the previous fiscal year, as the board may direct.”

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Gross Negligence /Supervision of Physical Therapy Aides)

12 11. Respondent is subject to disciplinary action under section 2660,
13 subdivisions (h), (i), (j), (k), and (l), and section 2630, in conjunction with California Code of
14 Regulations Title 16, section 1399, in that he failed to properly supervise physical therapy aides,
15 and failed to properly document treatment and sign patient charts. The circumstances are as
16 follows:

17 A. With respect to N.A.¹, respondent’s patient was treated by a physical therapy
18 aide on numerous occasions between April 4 and September 28, 2000, and between
19 January 2 and April 24, 2001, without any direct supervision of the physical therapy aide,
20 or any direct service to the patient rendered by respondent.

21 B. With respect to J.C., respondent’s patient was treated by a physical therapy
22 aide on numerous occasions between December 17, 1999, and June 30, 2000, and
23 between February 12 and April 2, 2001, without any direct supervision of the physical
24 therapy aide, or any direct service to the patient rendered by respondent.

25 C. With respect to N.S., respondent’s patient was treated by a physical therapy
26

27
28 1. All patients are referred to herein by their initials to protect their privacy. The full
names of all patients will be disclosed to respondent upon a timely request for discovery.

1 aide on numerous occasions between January 18 and April 26, 2001, without any direct
2 supervision of the physical therapy aide, or any direct service to the patient rendered by
3 respondent.

4 D. As to each of the above-mentioned patients, respondent failed to properly
5 document any specific services provided by respondent and the specific services
6 delegated to and provided by a physical therapy aide.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Failure to Properly Document Treatment)

9 12. Respondent is subject to disciplinary action under Code section 2620.7, in
10 conjunction with California Code of Regulations, Title 16, section 1399, in that he failed to keep
11 proper records of physical therapy treatments that he rendered. The circumstances are as follows:

12 A. The facts and allegations contained in Paragraphs 11.A. through 11.D.
13 inclusive, are incorporated by this reference as though fully set forth.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct/Presenting False Statements)

16 13. Respondent is subject to disciplinary action under Code section 810 in that
17 respondent knowingly prepared, made or subscribed to patient physical therapy treatment records
18 with the intent to present or use them, or to allow them to be presented or used, in support of
19 false or fraudulent claims for compensation. The circumstances are as follows:

20 A. The facts and allegations contained in paragraphs 11.A. through 11.C.
21 above, inclusive, are incorporated here by this reference as though fully set forth.

22 B. The physical therapy services referred to in paragraphs 11.A. through
23 11.C. above were billed to Blue Shield of California without any indication that some or
24 all of the therapy was performed by physical therapy aides.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Overutilization of Physical Therapy Services)

27 14. Respondent is subject to disciplinary action under Code section 725 in that
28 he engaged in repeated acts of clearly excessive administering of treatment or repeated acts of

clearly excessive use of treatment facilities as determined by the standard of the community of licensees. The circumstances are as follows:

A. The facts and allegations contained in paragraphs 11.A. through 11.D. above, inclusive, are incorporated here by this reference as though fully set forth.

B. Respondent continued to administer physical therapy treatments to, and/or order physical therapy treatments for, patients N.A., J.C. and N.S., as more fully set forth in paragraphs 11.A. through 11.C. above, notwithstanding that the patients experienced only minimal progress.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 17150,
issued to Ronald J. Berry;

2. Ordering Ronald J. Berry to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: July 25, 2005

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant